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In the Supreme Court of the United States

OCTOBER TERM, 1977

E. CODY LAIRD and JOANNE H. LAIRD, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The question presented in this income tax case is whether the courts below correctly held that the cost of a four-year television broadcasting contract was not depreciable over the term of the contract where the contract was renewable for an indefinite period of time.

In 1966, the National Football League expanded to include the Atlanta Falcons franchise. Petitioners are minority (6 percent) shareholders in Five Smiths, Inc., the Subchapter S corporation that paid approximately $8.5 million for the Atlanta franchise. In this refund suit petitioners brought in the United States District Court for the Northern District of Georgia, petitioners argued as an alternative theory of recovery that their corporation could depreciate the portion of the franchise purchase price that was allocable to the $4.2 million "present value" of the

CBS-NFL television contract over its four-year term.[1] Both the district court (Pet. App. 62a-63a) and the court of appeals (Pet. App. 20a-25a) held that the television contract was non-depreciable because it was indefinite in duration and would continue as long as Atlanta remained a member of the National Football League.

The decision below correctly held that the portion of the franchise purchase price allocable to the television contract was not depreciable. As the court of appeals observed, "the rights under the CBS contract were only a 'four-year link' in a 'perpetual chain' of television income. Though the existing contract provided a measure of Five Smiths' television rights over a particular four-year period, nevertheless the rights were meant to continue indefinitely" (Pet. App. 24a; footnote omitted).

There is accordingly no justification for assigning a determinable useful life of four years to the television rights. Here, as in the courts below, petitioners rest their claim to depreciation on the fact that the television agreement contained no stated renewal options, and urge that this factor justifies treating their rights to share in television revenue as if they would end with the 1969 season.

This contention is at odds with all of the economic realities. Despite the four-year term, the courts below properly characterized the Atlanta franchise's right to share in television revenues as derived from the franchise agreement and therefore entirely indefinite in duration. As

[1]Pursuant to Section 1371 *et seq.* of the Internal Revenue Code of 1954, as amended (26 U.S.C.), shareholders of a Subchapter S corporation are taxed as if they were members of a partnership. Thus, all of the corporation's income and deductions are passed through to the shareholders. Hence, the Commissioner's disallowance of the corporation's depreciation deduction affects petitioners' tax liability.

long as the Atlanta team remains in the League, its right to share in television revenues continues to have substantial value, a point underscored by the unbroken line of television contracts between the League and the television networks.[2]

Contrary to petitioners' assertion, the absence of stated renewal options in the 1966 through 1969 CBS contract is an empty formalism in the context of the organization and broadcasting of professional football. The parties contemplated that as long as there was a National Football League, and an Atlanta franchise in it, there would be television revenues to divide, and the Atlanta team would receive its share. There is accordingly no basis for petitioners' claim for depreciation over a four-year useful life.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

DECEMBER 1977.

[2]On October 26, 1977, the New York Times reported (p. B5, col. 1) that the National Football League had entered into new four-year contracts with ABC, NBC and CBS. These new contracts were reported to provide for payments of $46 million, $44 million and $48 million per year, respectively.

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